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OFFICE OF PETITIONS

In re Application of :  
Alexander Walland et al :  
Application No. 09/836,462 : DECISION GRANTING PETITION  
Filed: April 18, 2001 : UNDER 37 CFR 1.181  
Attorney Docket No. 1/1152/1088 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 10, 2005, which, for the reasons stated below, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-identified application.

The petition under 37 CFR 1.181 is granted.

The Notice of Abandonment mailed on December 16, 2004 stated that this application is abandoned for failure to timely reply to the February 11, 2004 Office action.<sup>1</sup>

Petitioner states that he was notified in a Notice of Improper Request for Continued Examination (RCE), dated February 11, 2004, that the RCE, filed on January 7, 2004 was improper since prosecution on the merits of the application had not closed. Petitioner further states that he believed no further action was necessary on his part in view of the statement contained in the Notice, which stated that, if the RCE was accompanied by a reply to a non-final Office action, then the reply would be entered and considered under 37 CFR 1.111. Therefore, petitioner is of the opinion that the holding of abandonment is improper as the examiner never responded to the amendment accompanying the RCE.

Petitioner is correct that the holding of abandonment is improper. In this regard, a reply was timely received with the improper RCE (along with a one month extension of time fee) and should have been considered pursuant to the provisions of 37 CFR 1.111, as stated in the Notice.

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<sup>1</sup> The Notice of Abandonment incorrectly states that this application is abandoned for failure to timely reply to the February 11, 2004 Office action, as this Notice did not set a period for reply, other than to indicate that the period for reply continues to run from the last Office action, which is the non-final Office action of September 12, 2003.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition treated as one to withdraw the holding of abandonment under 37 CFR 1.181 does not require payment of a fee therefor. Accordingly, no fee has been assessed to petitioner's deposit account for this petition. Further, as the RCE filed on January 7, 2004 was improper, the \$770 fee submitted therefor is unnecessary and will be credited to petitioner's deposit account in due course.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 1625 for appropriate action on the reply received January 7, 2004.



Frances Hicks  
Petitions Examiner  
Office of Petitions